IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1610 OF 2006

ALONG WITH

CHAMBER SUMMONS NOS.173 & 158 OF 2006

Balaram Rajaram Lashkare & Anr. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
.....
Mr.M.D.Angle for the Petitioner.
Mr.Pradeep Jadhav, AGP for Respondent No.1.
Mr.S.A.Sawant with Mr. H. V. Kode for Respondent No.3.
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**CORAM : DR.D.Y.CHANDRACHUD, J.**

September 4, 2006.

**P.C.** :

The Petitioners, who are husband and wife, have challenged in these proceedings, orders passed by the Slum Rehabilitation Authority on 16th November 2002 and in review on 10th November 2005 holding that the Petitioners are not eligible to participate in a Slum Rehabilitation Scheme.

2. The First Petitioner resided along with his father, Rajaram Chima Lashkare, in a structure admeasuring 13' x 21'

prior to the year 1990. The structure was situated on property bearing Plot No.75 (part), Scheme No.58, B.G. Kher Marg, Worli, Mumbai-400 018. The structure in the occupation of the First Petitioner's father was assigned number G-7. The case of the Petitioners is that in 1991, the Petitioners started residing separately in a structure admeasuring 9' x 9'. The aforesaid structure has been referred to as Structure G-2. In 1991, the Petitioners obtained a separate Ration Card. Electoral Identity Cards were issued by the Election Commission of India in 1995. In the Electoral Identity Card of the First Petitioner, his age was shown as 20 years (wrongly according to the First Petitioner, instead of 30 years) and he was shown to be residing in Structure G-7. The Second Petitioner was, however, shown as residing in Structure G-2 and her age was shown as 26 years. On 4th March 1997, the Competent Authority issued a list of eligible occupants, known usually as Annexure-II, certifying that the First Petitioner was eligible in respect of his structure admeasuring 9' x 9' while the father of the First Petitioner was eligible in respect of his structure admeasuring 13' x 21'. Subsequently in Writ Petition 1444 of 1998, this Court passed an order directing the Slum Rehabilitation Authority to redetermine the eligibility of all the occupants to

participate in the Slum Rehabilitation Scheme. On 16th November 2002, the SRA passed an order by which the First Petitioner was declared to be ineligible on the ground that he was residing in Structure G-7 along with his father. The First Petitioner filed a Review Application which was dismissed by the impugned order dated 10th November 2005. The Authority held that there was no power to review its earlier order, but that in any event the electoral roll showed that the First Petitioner was residing with his father.

-3. On behalf of the Petitioners a number of documents have been produced to support the submission that since 1991 both the Petitioners were residing independently in Structure G-2 which was distinct from Structure G-7 which was in the occupation of the First Petitioner's father. Since the entire case of the Petitioners turns on those documents, it would be necessary to briefly advert to the documentary material. The Petitioners have produced a compilation of documents in which a copy of an old Ration Card of the First Petitioner's father has been annexed. The Petitioners have also annexed a copy of a Ration Card pertaining to the First Petitioner and the members of his family which came to be issued in the year 1991. That Ration card inter alia bears the

name of the First Petitioner, the Second Petitioner and their minor daughter. The Identity Card issued by the Election Commission of India shows that the First Petitioner has been a resident of Structure G-7. On the other hand the Second Petitioner, who is the wife of the First Petitioner, is shown to be an occupant of Structure G-2. According to the Petitioners, this is an obvious error since both the husband and wife would in the ordinary course of things would be residing in the same structure. In any event, the Electoral Identity Cards would reveal that at least the Second Petitioner was, in any case, an occupant of the structure bearing No.G-2. The Electoral Roll of the year 1995 showed that the First Petitioner together with his father as an occupant of Structure G-7. However, the name of the Second Petitioner appears in the Electoral Roll of 1st January 1995 as an occupant of Structure G-2. According to the Petitioners, the position in the Electoral Roll was subsequently corrected to show both the First and Second Petitioners as occupants of Structure G-2. The Petitioners have also produced on the record, a list of occupants certified by the Municipal Corporation in March 1997 which shows that the First Petitioner and his father were occupants of separate structures. The First Petitioner is shown at Serial No.11 of the list as a

resident of a structure admeasuring 9' x 9', while the First Petitioner's father is shown at Serial No.12 and has been shown as an occupant of a structure admeasuring 13' x 21'.

-4. The Slum Rehabilitation Authority in its order dated 16th November 2002 appeared to have proceeded on the basis that the First Petitioner was shown as an occupant of Structure G-7 in the voters' lists of 1993 and 1995 together with his father. Since the First Petitioner's father was held to be eligible, the Authority came to the conclusion that the First Petitioner would not be eligible to an independent allotment. What the Authority, however, overlooked is the circumstance that even if this was correct, in so far as the Second Petitioner is concerned, she has been shown in the voters' list to be an occupant of an independent structure (G-2). The rights of the Second Petitioner, therefore, should not, in any event, have been disregarded. That apart, the documentary material showed that both the Petitioners had an independent Ration Card since 1991 and that the Municipal Corporation had also found that they were occupants of a separate and independent structure. The First and Second Petitioners are husband and wife and it is clear from the record that their claim to

be in occupation of an independent structure, namely Structure G-2, should not have been disallowed. There is absolutely no basis to draw a conclusion that Structures G-7 and G-2 are one and the same.

-5. In the circumstances, the Petitioners are entitled to succeed. The orders passed by the Slum Rehabilitation Authority on 16th November 2002 and 10th November 2005 in so far as they pertain to the eligibility of the Petitioners herein, are quashed and set aside. The Petitioners will be entitled to participate in the Slum Rehabilitation Scheme on the basis of their occupation of Structure G-2. Both the Petitioners would, therefore, be entitled to such rights as would ensue from their occupation of Structure G-2. Counsel appearing on behalf of the Petitioners has fairly stated before the Court that the Petitioners are concerned only with the determination of their own eligibility and do not intend to obstruct the Slum Rehabilitation Scheme. This assurance has been made in view of the apprehension expressed on behalf of the Society in respect of the implementation of the Slum Redevelopment Scheme being obstructed by the Petitioners.

6. The Petition is allowed in the aforesaid terms. There shall be no order as to costs.

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